



Volvo Trucks North America,  
a division of Volvo Group North America, LLC

vs.

Andy Mohr Truck Center, Inc., and Andrew F.  
Mohr

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**Expert Report of Gary Kleinrichert, CPA/ABV/CFF, CVA**

Submitted by:

Gary Kleinrichert, CPA/ABV/CFF, CVA  
April 15, 2013

United States District Court  
Southern District of Indiana  
Indianapolis Division  
Case Action No. 1:12-cv-00448-WTL-DKL



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**Exhibits:**

- 1 Summary of Lost Profits
- 2 Summary of Lost Total Sales
- 3 Summary of Gross Profit Percentage by Department
- 3.1 Actual Incremental Operating Expenses of Mack-Volvo Dealers and Mohr Actual Results
- 4 Mack Revenue Allocation for Non-Mack Class 8 New Truck Items: Indy and M&K Trucks
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- 9 Comparison of Mack-Volvo Dealerships with Volvo-Only Mohr Trucks

**Appendices:**

- 1 Curriculum Vitae of Gary Kleinrichert
- 2 Documents Reviewed and/or Relied Upon

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## **I. Qualifications of Gary Kleinrichert**

1. I am a Senior Managing Director in FTI's Forensic and Litigation Consulting practice and have over 27 years of experience as an auditor and as a consultant in accounting, auditing, forensic investigations, litigation, and valuation matters. Prior to joining FTI, I was a partner in the international accounting firm of KPMG LLP ("KPMG").<sup>1</sup> During my career I have performed a variety of services including serving as a business advisor and auditor to public and private companies in a variety of industries. I have also performed numerous accounting and forensic investigations, business valuations, due diligence and other consulting related to mergers and acquisitions. At KPMG, I was the coordinating partner responsible for Forensic Services for the Midwest Region of the United States.
2. I am a Certified Public Accountant, accredited in business valuation (ABV), Certified in Financial Forensics (CFF), a Certified Valuation Analyst, and a member of the American Institute of Certified Public Accountants, Indiana CPA Society, National Association of Certified Valuation Analysts, and the Association of Certified Fraud Examiners. I earned my Bachelor of Science degree in Accountancy and Computer Sciences from St. Joseph's College. I have included a copy of my curriculum vitae, including publications and testimony experience, as Appendix 1 to this report.
3. FTI is being compensated for my services at an hourly rate of \$385.

## **II. Assignment**

4. I have been asked by counsel for Andy Mohr Truck Center, Inc. ("Mohr Trucks") to ascertain the profits lost by Mohr Trucks as a result of a promise and agreement by Volvo Trucks North America ("Volvo Trucks") to grant a Mack Trucks franchise to Mohr Trucks.

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<sup>1</sup> I left PwC in July 1999 to join Andersen as a direct admit partner. In May 2002, KPMG purchased a portion of the Value Solution practice of Andersen in which I was a partner. FTI acquired the domestic Dispute Advisory Services (DAS) business of KPMG on October 31, 2003.

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5. I have reviewed a number of documents produced in this case in connection with my engagement. **Appendix 2** contains a list of all documents I have relied upon in reaching my conclusion. I reserve the right to prepare a separate written response if additional materials and/or information become available. Moreover, should counsel make any additional requests in this matter, I may amend this report or prepare further reports in response to those requests.

### III. Executive Summary

6. But for the alleged acts of Volvo Trucks, Mohr Trucks suffered the loss of the expected profits from operating combined Volvo-Mack dealership as summarized below. These damages figures reflect the expected synergies and derived benefit from economies of scale of a combined Volvo / Mack dealership.
  - a. Under **Scenario 1**, I calculate total lost profit damages suffered by Mohr Trucks for the period December 2010 through December 2016 to equal ~~\$Redacted~~<sup>2</sup>
  - b. Under **Scenario 2**, I calculate total lost profit damages suffered by Mohr Trucks for the period December 2010 through December 2017 to equal ~~\$Redacted~~.<sup>3</sup>
7. I understand that had Mohr Trucks obtained the Mack Trucks franchise, it would have reached a level of sales volume that would have allowed Mohr Trucks to expand into other revenue-generating product offerings, including leasing. At present, I have not estimated the damages suffered by Mohr Trucks as a result of these lost revenues. As additional information is obtained through discovery, including deposition testimony, I may supplement my report.

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<sup>2</sup> Note. This figure does not include the addition of prejudgment interest. I reserve the right to add prejudgment interest in the future if asked.

<sup>3</sup> *Ibid.*

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8. I understand that Mohr Trucks alleges that Volvo Trucks “failed to support Mohr Truck’s efforts.”<sup>4</sup> At present, I have not estimated the damages suffered by Mohr Trucks as a result of Volvo Trucks’ failures to support Mohr Trucks. As additional information is obtained through discovery, including deposition testimony, I may supplement my report.

## VI. Background

9. Based on the allegations of the Amended Complaint,<sup>5</sup> Volvo Trucks approached Mohr Trucks with an offer to operate a Volvo Trucks dealership in central Indiana in 2010 under the representation and agreement that Volvo Trucks would shortly thereafter also grant Mohr Trucks a Mack Trucks franchise.<sup>6</sup>
10. Mohr Trucks alleges that Volvo Trucks represented that Volvo Trucks “had the power to and would grant Mohr Trucks a Mack Trucks franchise in a separate transaction and authorize Mohr Trucks to operate a Mack Trucks franchise if Mohr Trucks first entered into a separate agreement to become a Volvo Trucks dealer (the ‘Mack Trucks Misrepresentation’).”<sup>7</sup> Moreover, “Mohr accepted the appointment of a Volvo Trucks franchise on the understanding Volvo Trucks had agreed to also grant it the Mack Trucks franchise, and that Volvo Trucks would convey those rights shortly thereafter in a separate transaction.”<sup>8</sup> The parties executed a “Dealer Sales and Service Agreement” effective April 20, 2010, which set forth various commercial terms associated with the Volvo Trucks dealership.<sup>9</sup>

<sup>4</sup> Plaintiff’s First Amended Complaint and Demand for Jury Trial, filed June 22, 2012 (“Amended Complaint 22JUN2012”), page 2, ¶ 3.

<sup>5</sup> See Amended Complaint 22JUN2012.

<sup>6</sup> See Amended Complaint 22JUN2012 (“[Sam] Johnston, [the Vice President of Dealer Development for both Mack Trucks and Volvo Trucks], indicated that putting the Volvo Trucks and Mack Truck franchises back in one dealership – as they were under Indy Truck’s ownership – would be possible”, page 3, ¶ 11. See also Amended Complaint 22JUN 2012 (“On March 9, 2010, Brian Higgins, the National Manager of Dealer Development for both Volvo Trucks and Mack Trucks, sent [Andy] Mohr dealer applications for both Volvo Trucks and Mack Trucks.”), page 4, ¶ 13.

<sup>7</sup> See Amended Complaint 22JUN2012, page 6, ¶ 21.

<sup>8</sup> See Amended Complaint 22JUN2012, page 6, ¶ 25.

<sup>9</sup> See Amended Complaint 22JUN2012, page 8, ¶ 30.

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11. In or around December 2010, Fredrik Hogberg, Senior Vice President of Distribution Development, called Mr. Mohr to inform him that Volvo Trucks was reneging on its agreement to grant Mohr Trucks the Mack Trucks franchise held by Indy Truck as set forth in the Amended Complaint. Indy Truck had sold its Mack Trucks franchise to another dealer, **Redacted** <sup>10</sup>

V. **Lost Profits Damages**

12. The damages sustained by Mohr Trucks as a result of the Mack Trucks Misrepresentation equal the sum of the lost value of the expected benefits, as well as synergies, from operating a combined Volvo-Mack dealership. I examine the estimated additional profits Mohr Trucks would have received had the Mack Trucks franchise been granted to Mohr Trucks.

13. I have analyzed both the lost historical profits (through December 2012) and future profits (through December 2016 and December 2017) expected from the increased revenues, as well as the benefits and synergies from operating a combined Volvo-Mack dealership.

14. I looked at two different scenarios when conducting a discounted cash flow model of lost profits. In the both scenarios for the historical lost profits period through 2012, I assume Mohr Trucks would have generated the same level of sales as the actual Mack Trucks sales generated by Indy Trucks and **Redacted** during the time in which the latter held the Mack Trucks franchise in question. In both scenarios, I calculate lost profits based on the modified operating expenses Mohr Trucks could have reasonably expected historically and prospectively as a combined Volvo / Mack dealership. In scenario 1, I estimate future lost profits through December 2016. In scenario 2, I estimate future lost profits through December 2017.

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<sup>10</sup> See Amended Complaint 22JUN2012, page 9, ¶ 40.

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**A. Lost Historical Sales and Gross Profit**

15. From the document titled "Buy-Sell Data Chart," provided by Volvo Trucks, I observe that the dealer identified as dealer "HH," located in the state of Indiana, sold a Mack dealership to a dealer identified as dealer "V-Indpls" on December 9, 2010. I understand dealer "HH" to be \_\_\_\_\_ and dealer "V-Indpls" to be \_\_\_\_\_<sup>11</sup>

16. I requested and received financial records for dealers holding Volvo and Mack dealerships.<sup>12</sup> From the document titled "Dealer Financial Statements," provided Volvo Trucks, I observed the corresponding 2010 sales figures for Indy Trucks and the corresponding 2011 and 2012 sales figures for \_\_\_\_\_

17. The Mack Trucks dealership was transferred to \_\_\_\_\_ in January of 2011. Indy Trucks and \_\_\_\_\_ held the Mack Trucks dealership in dispute for the month of December 2010 and fiscal years 2011 and 2012, respectively. Total sales for these entities related to Mack trucks sales<sup>13</sup> totaled approximately \$ \_\_\_\_\_ for December 2010, fiscal year 2011, and fiscal year 2012,<sup>14</sup> respectively. See Exhibit 2 of this report. I assume had Mohr Trucks held the Mack Trucks dealership held by Indy Trucks and \_\_\_\_\_ during this time period, Mohr Trucks would have made, at a minimum, the sales made by Indy Trucks and \_\_\_\_\_ during this time period, which represent the historical lost sales incurred by Mohr Trucks.

18. The financial statements I reviewed also provide gross profit figures. Gross profit margins varied depending upon product lines. See Exhibit 3 of this report for a summary of gross profit by department, for (1) Mack / Volvo dealers within a 30-mile radius of a \_\_\_\_\_

<sup>11</sup> See Buy-Sell Data Chart.pdf.

<sup>12</sup> See Dealer Financial Statements.pdf that matches financial statements provided by Volvo Trucks to particular Dealers by geographic location. Dealer financial statements for a total of 47 dealers are found in Bates Numbers VT-30b6-0002 through VT-30b6-0811.

<sup>13</sup> Mack Truck Sales include New Truck sales, as well as Used Truck sales, Service, Parts, etc. See Exhibit 2. Service and Parts are allocated based on a percentage of new truck sales and inventory to total new truck sales and inventory. See Exhibits 3.1 and 4.

<sup>14</sup> Note, 2012 records I was provided for \_\_\_\_\_ were limited to the first 11 months. The figure I report is annualized.

Redacted



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metropolitan area, including average, highest and lowest among them; (2) estimated Mack-only for fiscal year 2012; (3) Mohr Trucks estimated pro forma for fiscal year 2012; and (4) Mohr Trucks for fiscal year 2012. The financial records of the dealerships provided by Volvo Trucks<sup>15</sup> corroborate that the majority of gross profits derived by dealerships comes in parts and services compared to actual truck sales. Additionally, the gross profit percentages by departments do not vary significantly between the dealerships I reviewed through the various years. Based on this assessment of the various gross profits reviewed, I have utilized the **Redacted** estimated Mack-only gross profit margins for fiscal year 2012 as the estimated gross profit margins from Mack sales that Mohr Trucks would have achieved during the damage period.

19. For the historical period of 2011 and 2012, the financial records indicated new Mack Class 8 truck sales separately; they did not similarly separate the services and parts department sales revenue attributable specifically to the Mack Trucks dealership. I calculated the percentage of Mack Class 8 new truck sales to total new truck sales. This percentage was utilized to estimate the allocation of total used trucks sales attributable to Mack. Similarly, I calculated the percentage of Mack and Volvo parts and accessory revenues to total parts and accessory revenues and used that percentage to estimate the total parts and accessories revenue attributable to Mack.<sup>16</sup> These percentages were similarly utilized to allocate total gross profits attributable to Mack to arrive at a gross profit of approximately \$ **Redacted** for December 2010; fiscal year 2011, and fiscal year 2012, respectively, with combined gross profit margins of **Redacted**, and percent, respectively. See **Exhibit 1** of this report.

<sup>15</sup> See Dealer Financial Statements.pdf that matches financial statements provided by Volvo Trucks to particular Dealers by geographic location. Dealer financial statements for a total of 47 dealers are found in Bates Numbers VT-30b6-0002 through VT-30b6-0811.

<sup>16</sup> Financial statements provided broke out parts & accessories held by the dealer in the caption 'Mack & Volvo' parts & accessories. For Indy Trucks and **Redacted**, which is a Mack franchise, this category is considered to be the Mack parts & accessories.



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**B. Lost Future Sales and Gross Profits**

20. I have calculated lost future profits for the four-year period of 2013 through 2016 and the five-year period of 2013 through 2017. There is a basis to project lost profits with reasonable certainty through this four to five-year future period of time. In estimating what future lost sales would be, I estimated annual growth rates of \_\_\_\_\_ and \_\_\_\_\_ percent for years 2013, 2014, 2015, 2016, and 2017, respectively. These growth rate assumptions are based on (1) my review of historical growth rates achieved by Mohr Trucks as a Volvo dealership and other dealer financial statements; (2) my review of public statements made by Volvo with regard to overall heavy-truck demand projections; and, (3) discussions with management at Mohr Trucks.

21. Based on my review of historical growth rates achieved by Mohr Trucks as a Volvo dealership, I observed that in fiscal year 2012, Mohr Trucks generated total sales of approximately \$\_\_\_\_\_, essentially ramping up a Volvo dealership as a franchise dealer from the ground up. As of March 2013, moreover, Mohr Trucks reported total sales of approximately \$\_\_\_\_\_ compared to total sales of approximately \$\_\_\_\_\_ in March of 2012. This represents a year-over-year increase of approximately \$\_\_\_\_\_, or a year-over-year growth rate of \_\_\_\_%.<sup>17</sup> This growth rate was achieved by Mohr Trucks as a Volvo dealer. Assuming Mohr Trucks would have held the Mack Trucks dealership that same year and the subsequent sales achieved by M&K Trucks that year, Mohr Trucks would have nearly doubled in total Volvo and Mack-related sales to approximately \$\_\_\_\_\_. Mohr Trucks has hence shown the ability to achieve strong growth.<sup>18</sup> Also, I understand that other automotive dealerships owned by Andy Mohr have received accolades and awards from OEMs for their superior service and performance.

<sup>17</sup> See email from Kristi Walker, Controller for Mohr Trucks, to Andy Mohr, CEO of Mohr Trucks, dated April 6, 2013.

<sup>18</sup> See Amended Complaint 22JUN2012, pages 3-4, ¶ 12 (“[Sam Johnston, Vice President of Development for both Mack Trucks and Volvo Trucks,] sent an email to Lawrence Cook, the District Manager for Volvo Trucks North America [that]...emphasized to Cook that Mohr ‘is a successful entrepreneur’ who ‘runs a high performance group of car dealerships as well as a commercial Ford Truck business’ and that Mohr had ‘an individual with heavy truck experience’ to help build that line of business.”).

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22. Second, I reviewed what Volvo itself communicated to the market about overall heavy-duty truck sales. The Financial Times reported that:

*"After the collapse of Lehman Brothers in the third quarter of 2008, Volvo entered the worst crisis in its history, as the number of cancellations of orders for its trucks exceeded its intake of orders.*

*Some of its customers had trucks with their company logos painted on the side in Volvo's yards for which they could not take final delivery after banks' liquidity dried up. Volvo's sales collapsed by more than 50 per cent over six months – double the rate it had done during the Suez crisis in 1956, previously the worst downturn it had faced since its founding in 1927."*<sup>19</sup>

23. Leif Johansson, Volvo AB's chief executive, said "the financial crisis had marked a 'hundred-year storm' for his industry." Adding that sales in June of 2010 remained "at a level of an extreme down cycle." From the valley of this down cycle, however, Mr. Johansson communicated to the market his expectation for growth; specifically that he expected truck sales in the US to rise by 20 percent.<sup>20</sup>

24. Third, I interviewed Andy Mohr and discussed with him what customer relationships the sales force currently has in place that could have supported the addition of the Mack franchise. Mohr Trucks has an established customer base, with a sales force already in place that maintains customer relationships. Adding a new business line would presumably experience a ramp up period that subsequently tapers off over time. Additionally, I understand the Mack and Volvo truck lines offer complementary product offerings to clients to allow dealers to have a broader range of product offerings to meet customer application demands.

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<sup>19</sup> See "Volvo sees slow recovery in truck sales," *Financial Times*, June 14, 2010.

<sup>20</sup> *Ibid.*

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25. Based on these three factors, I think it reasonable to assume annual growth rates of approximately \_\_\_\_\_ and \_\_\_\_\_ for years 2013, 2014, 2015, 2016 and 2017, respectively.

26. Annual growth rates of \_\_\_\_\_ and \_\_\_\_\_ for years 2013, 2014, 2015, 2016 and 2017, respectively; result in total lost sales of approximately \$\_\_\_\_\_, and \$\_\_\_\_\_, respectively. Applying the same gross profit margins discussed above, which combined represent a \_\_\_\_\_ percent profit margin in fiscal year 2012, I estimate lost future gross profits for years 2013, 2014, 2015, 2016, and 2017 as approximately \$\_\_\_\_\_, and \$\_\_\_\_\_, respectively.

**C. Mohr Trucks Capacity to Support Combined Volvo / Mack Truck Dealership**

27. For 2011 Mohr Trucks appeared to have the capacity to support the estimated level of combined revenues from the Volvo / Mack dealership. The combined estimated revenues – when adding 2011 actual Mohr Trucks sales of approximately \$\_\_\_\_\_ for Volvo only, with the 2011 actual \_\_\_\_\_ sales of approximately \$\_\_\_\_\_ for Mack only – equal approximately \$\_\_\_\_\_. In comparison, the actual 2012 Mohr Trucks sales for Volvo only equaled approximately \$\_\_\_\_\_.

28. However, I understand that after 2011 Mohr Trucks lacked the capacity to handle the “square-footage” needed to support a combined Volvo / Mack Truck dealership. Andy Mohr expected to acquire new space and “build it from the ground up.”<sup>21</sup> He estimated financing new space and building out on it. Actual total occupancy expenses for Mohr Trucks in fiscal year 2012 equaled approximately \$\_\_\_\_\_, or \_\_\_\_\_ percent of total revenues. I estimate increased occupancy expenses as a percentage of revenue equal to \_\_\_\_\_ percent, or approximately an additional \$\_\_\_\_\_ more to reflect the increased estimated costs for additional capacity related to a combined Mack-Volvo dealership. The increase is primarily due to an estimated approximate \$\_\_\_\_\_ per month increase in rental expense on facility and estimated increased taxes and insurance. These

<sup>21</sup> Discussion with Andy Mohr on April 9, 2013.

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costs, as with other incremental operating expenses discussed below, were deducted from the lost gross profits discussed above. See Exhibit 1 of this report. In addition, I estimated an additional \$~~Redacted~~ in capital expenditures in 2012 to account for the various costs associated with moving to a new space, administrative, signage, furniture and fixtures, and equipment.

**D. Incremental Operating Expenses Associated with Lost Sales**

29. To estimate the incremental operating expenses associated with the lost sales discussed above, I requested and reviewed the historical financial statements from Mohr Trucks and calculated the incremental operating expenses as a percentage of sales. I estimate operating expenses as a percentage of revenues based on the synergies and economies of scale I estimate Mohr Trucks would have realized, assuming they had been granted the Mack Trucks franchise. See Exhibits 1 and 7 of this report.

30. I estimate operating expenses as a percentage of revenues based on the synergies and economies of scale I estimate Mohr Trucks would have incurred in order to support the estimated lost revenues discussed above, I compared Mohr Trucks' historical operating expense data with that of other historical heavy-duty truck dealerships. I selected heavy-duty truck dealerships that held both Volvo and Mack dealerships in the financial statements provided.<sup>22</sup> From the document titled "Dealer Financial Statements," I identified three dealers within 30 miles of a metropolitan area that held both Volvo and Mack dealerships. In the document titled "Dealer Financial Statements.pdf" provided, these three dealers are identified as in the 'Dealer Z,' 'Dealer S,' and 'Dealer E at Summit.'<sup>23</sup> These dealerships had relatively disparate operating expenses as a percentage

<sup>22</sup> See 'Dealer Financial Statements.pdf' that matches financial statements provided by Volvo Trucks to particular Dealers by geographic location. Dealer financial statements for a total of 47 dealers are found in Bates Numbers VT-30b6-0002 through VT-30b6-0811.

<sup>23</sup> See Exhibit 9 of this report. The Bates Numbers associated with the Dealer Z are VT-30b6-0503-0508; VT-30b6-0552-0557; and, VT-30b6-0854-085. Dealer Z has a fiscal year ending in June. The Bates Numbers associated with Dealer S are VT-30b6-0371-0376; VT-30b6-0690-0695; and, VT-30b6-0812-0817. Dealer S has a fiscal year ending in May. The Bates Numbers associated with 'Dealer E at Summit' are VT-30b6-0437-0442; VT-30b6-0672-0677; and, VT-30b6-2092-2097. Dealer E at Summit has a fiscal year ending in December.

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of revenue and varied significantly by size, both among themselves and in comparison to Indy Trucks and ~~Redacted~~.<sup>24</sup>

31. A dealership able to provide both Volvo and Mack products would benefit from the synergies and economies of scale which would reduce the overall level of operating expenses as compared to a dealership limited to only one of those products. As such, I have estimated the level of operating expenses reflecting the impact of those expected benefits. See Exhibit 7 that provides a line-by-line estimate of the amount of such costs and their bases.
32. Using the estimated operating expenses as a percentage of revenue derived in Exhibit 7 of my report, I calculated historical lost profits for December 2010, fiscal year 2011, and fiscal year 2012 as approximately \$ ~~Redacted~~, respectively. Similarly, I estimated future lost profits for fiscal years 2013, 2014, 2015, 2016, and 2017 as approximately \$ ~~Redacted~~, respectively. Discounted at 8 percent, I estimate total lost profit damages suffered by Mohr Trucks for the period December 2010 through December 2016 and the period December 2010 through December 2017 to equal \$~~redacted~~ and \$~~redacted~~, respectively.<sup>25</sup> These damages figures reflect the expected synergies and derived benefit from economies of scale of a combined Volvo / Mack dealership. See Exhibit 1.

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<sup>24</sup> See Exhibits 5 and 9.

<sup>25</sup> Note. This figure does not include the addition of prejudgment interest. I reserve the right to add prejudgment interest in the future if asked.

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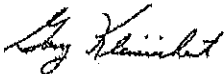
**E. Leasing Lost Profits**

33. I understand that had Mohr Trucks obtained the Mack Trucks franchise, it would have reached a level of sales volume that would have allowed Mohr Trucks to expand into other revenue-generating product offerings, including leasing. At present, I have not estimated the damages suffered by Mohr Trucks as a result of these lost revenues. As additional information is obtained through discovery, including deposition testimony, I may supplement my report.

**VI. Damages Suffered Due to Volvo Trucks alleged "failure to support Mohr Trucks"**

34. I understand that Mohr Trucks alleges that Volvo Trucks "failed to support Mohr Truck's efforts."<sup>26</sup> For example, I understand that Mohr Trucks contends that Volvo Trucks did not provide adequate support with respect to its efforts to make sales with numerous customers, including Celadon and the State of Indiana, among others. At present, I have not estimated the damages suffered by Mohr Trucks as a result of Volvo Trucks' alleged failures to support Mohr Trucks. As additional information is obtained through discovery, including deposition testimony, I may supplement my report.

Respectfully submitted,



Gary Kleinrichert, CPA/ABV/CFF, CVA

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April 15, 2013

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<sup>26</sup> See Amended Complaint 22JUN2012, page 2, ¶ 3.